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JONATHAN BROWNING, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JONATHAN BROWNING, INC., a California
corporation,

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC., a Nevada
limited liability company; LAS VEGAS SANDS,
LLC., a Nevada limited liability company; LAS
VEGAS SANDS CORP., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

No. C 07-3983 JSW

**[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS**

Date: November 9, 2007
Time: 9:00 a.m.
Place: Courtroom 2, 17th Floor
Judge: Honorable Jeffrey S. White

1 The motion of Defendants Venetian Casino Resort, LLC, Las Vegas Sands, LLC,
 2 and Las Vegas Sands Corp. (collectively “Defendants”) to dismiss the complaint under Rule
 3 12(b) of the Federal Rules of Civil Procedure, or, alternatively, to transfer venue under 28 U.S.C.
 4 § 1404(a) having come before this Court, and good cause appearing in support thereof,

5 IT IS HEREBY ORDERED that Defendants’ motion is DENIED.

6 1. The Court has subject matter jurisdiction over Plaintiff Jonathan
 7 Browning, Inc.’s claims for relief for copyright infringement, *see* Compl. ¶¶ 38-73, because
 8 Jonathan Browning applied for copyright registration for the sconces at issue in this case, and the
 9 registration was refused, prior to filing this action. *See* 17 U.S.C. § 411(a); Compl. ¶ 11;
 10 Declaration of Marco Heithaus (“Heithaus Decl.”) ¶¶ 2, 3; Declaration of Thomas S. Hixson
 11 (“Hixson Decl.”) ¶ 3.

12 2. The Court has personal jurisdiction over the Defendants.

13 A. The Court has general jurisdiction over the Venetian because of the
 14 Venetian’s substantial, systematic and continuous contacts with California. The Venetian’s
 15 complaint filed in Civil Action No. C 03-01307 JL in this Court states that the Venetian targets
 16 Northern California in particular for its advertising and marketing, including the Internet,
 17 magazines and other media. Plaintiff has also submitted evidence showing that a substantial
 18 fraction of the Venetian’s customers are from California, exceeding the percentage from any
 19 other state. Hixson Decl., Ex. A. Accordingly, general jurisdiction exists here. *Coremetrics,*
 20 *Inc. v. AtomicPark.com, LLC*, 370 F. Supp. 2d 1013, 1017-19 (N.D. Cal. 2005).

21 B. The Court also has specific jurisdiction over the Venetian. The
 22 Venetian sent its agent to Los Angeles to purchase the sconces it allegedly copied, it transmitted
 23 to Plaintiff’s San Francisco office the request for a bid, it rejected the bid in a communication to
 24 San Francisco, and the injury allegedly caused by the Venetian’s forum-related activities will be
 25 felt in California. The Venetian has purposefully directed its activities giving rise to Plaintiff’s
 26 claims at California, and accordingly specific jurisdiction exists. *Menken v. Emm*, __ F.3d __,
 27 No. 05-16467, 2007 U.S. App. LEXIS 22327, at *12-13 (9th Cir. Sept. 19, 2007). Nor has the
 28 Venetian made a “compelling case” that the exercise of jurisdiction would be unreasonable here.

1 *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1324 (9th Cir. 1998).

2 C. The Court also has personal jurisdiction over Las Vegas Sands
3 LLC and Las Vegas Sands Corp. Plaintiff has alleged that these holding companies are alter
4 egos of the Venetian. Compl. ¶ 9. Defendants have submitted no evidence to the contrary.

5 3. Venue is appropriate in this District.

6 A. Venue is proper here under 28 U.S.C. § 1400(a) because personal
7 jurisdiction over Defendants exists in this District, as set forth above. *Shropshire v. Fred*
8 *Rappoport Co.*, 294 F. Supp. 2d 1085, 1094 (N.D. Cal. 2003).

9 B. Venue is proper under 28 U.S.C. § 1391(b)(2) because this District
10 is a place where “a substantial part of the events or omissions giving rise to the claim occurred,
11 or a substantial part of the property that is subject of the action is situated.” 28 U.S.C. §
12 1391(b)(2). Plaintiff alleges that: (1) the Venetian solicited the bid from Jonathan Browning by
13 sending its request for a bid to Plaintiff in this District; (2) the bid was sent from this District; (3)
14 the sconce designs at issue in this case were created in this District; (4) the terms of the bid
15 provided for the Venetian to take title to the sconces in this District; and (5) the financial injury
16 resulting from the Venetian’s conduct will be felt in this District where Plaintiff is incorporated
17 and its two owners reside. Compl. ¶¶ 13, 19, 21. *Sebastian Int’l, Inc. v. Russolillo*, No. 00-
18 03476, 2000 U.S. Dist. LEXIS 21510 at *19 (C.D. Cal. Aug. 25, 2000) (a “defendant’s
19 intentional acts directed towards [the Northern District], where the harm was principally
20 suffered, mean[s] a substantial part of the events giving rise to the litigation occurred [there]”);
21 *Panavision Int’l, L.P. v. Toeppen*, 945 F. Supp. 1296, 1296, 1301 (C.D. Cal. 1996) (upholding
22 venue where the defendant’s actions “were expressly aimed at [plaintiff in] California and which
23 caused harm”), *aff’d* 141 F.3d 1316 (9th Cir. 1998).

24 4. Transfer to Las Vegas under 28 U.S.C. § 1404(a) is not appropriate.
25 Plaintiff and its witnesses are located in this District. Other witnesses are located in Los Angeles
26 and China. The Venetian asserts that witnesses may exist in Las Vegas, but it has not identified
27 any, nor what the subject of their testimony, if any, would be. Nor has the Venetian carried its
28 burden to show that litigating in this District is unduly expensive or inconvenient. *Cochran v.*

1 *NYP Holdings, Inc.*, 58 F. Supp. 2d 1113, 1119 (C.D. Cal. 1998).

2 5. Plaintiff's implied contract and unjust enrichment claims, *see* Compl.

3 ¶¶ 87-88, 91, 94, state a claim under California law. *Desny v. Wilder*, 46 Cal. 2d 715, 734-39
4 (1956).

5 6. Plaintiff's claims for unfair competition, implied contract and unjust
6 enrichment are not preempted by the Copyright Act because they contain elements not shared by
7 the Copyright Act. *See Firoozye v. Earthlink Network*, 153 F. Supp. 2d 1115, 1127-28
8 (N.D. Cal. 2001).

9 7. Plaintiff's objections to the Declaration of Michelle A. Hon and the
10 Declaration of Franklin H. Levy are SUSTAINED.

11 8. Plaintiff's request for judicial notice is GRANTED.

12 THEREFORE, IT IS SO ORDERED THAT Defendants' Motion to Dismiss or
13 Transfer is DENIED.

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Hon. Jeffrey S. White
United States District Court Judge
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